

IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF CALIFORNIA

MELVIN JONES, JR., ) No. CV-F-05-148 OWW/DLB  
 )  
 )  
 Plaintiff, ) MEMORANDUM DECISION AND  
 ) ORDER DENYING PLAINTIFF'S  
 ) MOTION FOR RECONSIDERATION  
 ) (Doc. 422) AND VACATING ORAL  
 ) ARGUMENT SET FOR JUNE 2,  
 vs. ) 2008  
 )  
 )  
 JOHN HOLLENBACK, )  
 )  
 )  
 )  
 Defendant. )

On April 7, 2008, Plaintiff Melvin Jones, Jr., proceeding in *pro per*, filed a motion for reconsideration of the "Memorandum Decision and Order Granting Defendant's Motion for Attorney's Fees (Doc. 376); Denying Plaintiff's Special Motion to Strike Counter-Motion for Sanctions Under Rule 11 (Doc. 395); Striking Docs. 380, 384, 386, 387, 388, 397, 400, 405, 406; and Denying as Moot Plaintiff's Motions for Sanctions (Docs. 397, 400, 405, 406)" filed on March 20, 2008. (Doc. 417).

Plaintiff's motion for reconsideration is DENIED and oral argument set for June 2, 2008 is VACATED.

1 Plaintiff contends that the Court "LACKS DISCRETION (and/or  
2 JURISDICTION) TO ENABLE (Apparently) defense misconduct [Fraud  
3 upon the Court], which subverts Jones' substantial trial rights,  
4 and Judicial integrity thereof." Plaintiff asserts that the  
5 Court's "knowledge of Related Case # 08-318 OWW/DLB, pendency of  
6 the same, merits of same, render said order(s) grossly improper -  
7 at BEST."

8 Plaintiff's position is without merit. Plaintiff filed a  
9 motion to vacate the judgment in this action pursuant to Rule 60,  
10 Federal Rules of Civil Procedure, based on alleged fraud upon the  
11 court and defense misconduct. Plaintiff elected to withdraw that  
12 motion and, on March 6, 2008, filed an "Independent ACTION FOR  
13 RELIEF From Judgment - to REMEDY FRAUD ON THE COURT" against  
14 Daniel Wainwright. *Jones v. Wainwright*, No. CV-F-08-318 OWW.  
15 The filing of this action did not divest the Court of  
16 jurisdiction or discretion to resolve Defendant Hollenback's  
17 motion for attorneys' fees in this action and Plaintiff's various  
18 contentions in opposition to the motion, which matters were heard  
19 after full briefing and opportunity to be heard and submitted for  
20 decision on February 11, 2008 and decided on March 20, 2008.  
21 Plaintiff asserts that "given the nature and complexity of said  
22 case - defense's fraud upon the Court renders said orders  
23 contrary to fundamental fairness." Plaintiff elected to file an  
24 independent action for fraud on the Court. Plaintiff puts the  
25 cart before the horse because it has not been determined in *Jones*  
26 *v. Wainwright* that any fraud upon the Court occurred. Until and

1 unless that determination is made, there is no basis for  
2 reconsideration of the March 20, 2008 Order.

3 Plaintiff seeks reconsideration of the March 20, 2008  
4 Memorandum Decision and Order on the ground that it "is silent as  
5 to 9<sup>th</sup> Cir. or Supreme Court Law as to Rule 11 which exempts the  
6 defense from thier it's [the defense'] own misconduct, by  
7 burdening Plaintiff ... with being responsible for a licensed  
8 attorneys misconduct [sic]." Plaintiff's contention is baseless.  
9 The March 20, 2008 Memorandum Decision and Order specifically  
10 addressed and rejected Plaintiff's contention that Defendant  
11 violated Rule 11. (Doc. 417 pp. 59-68).

12 Plaintiff seeks reconsideration on the ground that  
13 "Plaintiff was not given notice of the Court's intent to view the  
14 'alleged' entire record in case # 05-148 in determination of S.  
15 1988 prevailing party." Plaintiff asserts "that the record is  
16 replete with defense misconduct."

17 This contention is also meritless. Defendant Hollenback  
18 referred to the entire record in this action in seeking  
19 attorneys' fees. Plaintiff, who inundated the Court with papers,  
20 as described in the March 20, 2008 Memorandum Decision, in  
21 connection with the motion for attorney's fees, only to withdraw  
22 them at the February 11, 2008 hearing on the motion for  
23 attorney's fees. The motion for attorney's fees was fully heard  
24 and considered and Plaintiff had ample opportunity to contest  
25 attorney's fees based on the record in this action.

26 For the reasons stated above:

1. Plaintiff's motion for reconsideration of the March 20, 2008 Memorandum Decision and Order is DENIED;
2. Oral argument set for Monday, June 2, 2008 is VACATED;
3. No further filings will be accepted in this action in which a Notice of Appeal has been filed.

IT IS SO ORDERED.

Dated: April 9, 2008

/s/ Oliver W. Wanger

UNITED STATES DISTRICT JUDGE